



Consumer Electronics Association

2500 Wilson Blvd.
Arlington, VA
22201-3834 USA
(866) 858-1555 toll free
(703) 907-7600 main
(703) 907-7601 fax
www.CE.org

January 18, 2005

VIA ECFS

Mr. Jonathan Cody
Legal Advisor, Office of Chairman Michael K. Powell
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Communications in CS Docket 97-80

Dear Ms. Dortch:

While the Consumer Electronics Association (“CEA”) does not wish to perpetuate the filing of letters back and forth between it and the National Cable and Telecommunications Association (“NCTA”), we wish to respond very briefly to NCTA’s particular arguments, and to summarize the core considerations.

Purported Cost of CableCARDS

Cable’s argument about purchasing “enormous volumes of cards” from a “small subset of manufacturers” is symbolic of its continued, passive resistance to this and other Commission mandates. When these cards were to be supplied *only* to competitive entrants, the “small subset of manufacturers” did not seem to pose a problem that the cable industry deemed worthy of addressing. Nor has the manufacturing base been identified as a problem as to the procurement of millions of proprietary set-top boxes. Nor did NCTA comment when the Consumer Electronics Retailers Coalition (“CERC”) came forward with lower price figures from an additional, experienced supplier.

NCTA’s repetition of the non-material costs of conditional access is puzzling and beside the point – which is that these costs are inherent to integrated, as well as separable, security systems. As for DBS competition, DBS providers do use a separable (though not identical) interface *and* operate according to national portability specifications.

Purported Pricing of Leased Boxes

NCTA’s rote citation to pricing regulations ignores unavoidable facts: (1) different MSOs’ charges to consumers for the same STB vary widely; (2) MSO consumer charges for the same CableCARDS vary even more widely and; (3) some MSOs charge consumers the *same* rental fee for new digital boxes and old fully depreciated analog boxes, even though the fee they charge consumers upon destruction of a digital box (e.g., when a house is destroyed by fire or

natural catastrophe) is *double* that for an analog box. If this is not effective pricing discretion, then what is?

Replacement of Boxes

The main point is that MSO commitment to a common, separable security interface must drive their future procurement plans in order for such security to be timely, equally, and efficiently supported. In this respect, the future is now.

Distraction from Future Innovation

In 1999, CEA, CERC and others took the initiative in recommending to the Commission that its requirement for separable *analog* security be lifted, so that the cable industry could concentrate its resources on the separable digital interface to reflect where the market was heading. In 2003, the Commission gave the industry another 18 months for this purpose. There is nothing in the record to suggest that future innovations in level playing field security would be imperiled by, finally, letting this regulation have its intended effect after 7 years. Nor is there any assurance that *all* MSOs would employ the additional approaches to security that may be contemplated. The “innovation concentration” argument is simply worn out as a basis for delay.

Regarding CE and information technology innovation, Congress’s vision for device competition assumed a flowering in *types* of devices, as well as their performance. This has not yet been accomplished. Despite the announcements cited by NCTA, the present and announced consumer electronics and information technology products continue to lag behind, and the cable industry’s measured commitment to separable security serves as a damper for investment.

What Is A “Significant Disadvantage”?

NCTA is simply wrong in complaining that the present disadvantages cited by CEA and its member companies were only those inherent to the “one way” limitations of devices. It is true that both CEA and consumer electronics retailers have argued in the past that the cable industry could and should have done more to meet its July 1, 2000 obligations. It also is true that manufacturers and retailers have argued that progress in the 2-way sphere should have been faster – indeed, it appears that a clear cable commitment to a technical regime that is potentially nationally portable did not occur until the cable industry decided to settle on one to serve its *own* needs. Indeed, that is precisely CEA’s point in the present discussion.

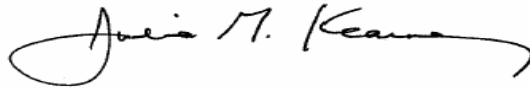
The disadvantage referred to is the marginalization of separable security, which remains the legal and practical foundation block of competitive entry. Despite present good faith efforts to remedy problems, the record of support for “single stream” CableCARDS is marginal at best. The record and schedule for support of multi-stream cards has been disappointing as to timeframe and priority. As long as this is the case, and the cable industry continues to point to its inability to control its “small subset of manufacturers” who are its CableCARD vendors, competitive entrants and their potential investors will persist in seeing themselves at a disadvantage.

Despite repeated arguments, the bottom line remains: Cable has had years to prepare for the compliance date and has succeeded in delaying implementation every step of the way. The Commission said in its 1998 *Report & Order*, and on Reconsideration in 1999, that January 1, 2005, should provide an adequate transition period for the cable industry to move to reliance on a common interface. In 2003, the Commission pushed back the date back to July 1, 2006.

The requirement was written and discussed with input from all interested parties and upheld on appeal in the D.C. Circuit. The time for compliance is upon us and there is simply no tangible case for any further delay.

Please do not hesitate to contact me at 703.907.7644 should you have any questions.

Respectfully submitted,



Julie M. Kearney
Senior Director
Regulatory Affairs

cc: Marlene H. Dortch, Secretary (for inclusion in CS Docket No. 97-80)
The Honorable Michael K. Powell
Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Jordan Goldstein
Stacy Robinson Fuller
Johanna Mikes Shelton
Daniel Gonzalez
Catherine Crutcher Bohigian
Kenneth Ferree
Deborah Klein
Rick Chessen
William Johnson
Steve Broeckert
Mary Beth Murphy
Natalie Roisman
Alison Greenwald
John Wong
Thomas Horan
Neal Goldberg, NCTA